IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6168 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)

Versus

MAHENDRA L.KOTHARI - Respondent(s)

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Appearance :

MS BHAVIKA KOTECHA for MR YOGESH S LAKHANI for Petitioner

MR DG CHAUHAN for Respondent

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 31st December, 1996 passed by the Labour Court, Rajkot in Reference [I.T.R.] No. 286/90, whereby the Labour Court has set aside the penalty of withholding

of five years increment with cumulative effect passed by the petitioner Corporation.

2. The short facts of the case are that the respondent was working as Driver with the petitioner Corporation. On 5th June, 1986 when the respondent was on duty, due to his negligence the bus collided with a hand cart whereby one person was seriously injured and another person succumbed to injuries. Therefore, charge sheet was issued and thereafter departmental inquiry was initiated against him. Since the said misconduct of the respondent was proved, the petitioner Corporation by order dated 18th July, 1987 imposed a penalty of withholding of five increments with cumulative effect.

2.1. Being aggrieved by the said order, the respondent raised an industrial dispute which was ultimately referred to the Labour Court, Rajkot for adjudication. The Labour Court after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties and have perused the materials produced on record.

However, while exercising powers under Section 11(A) of the Industrial Disputes Act, 1947, the Labour Court has not imposed any penalty. While substituting the order of dismissal the Labour Court ought to have imposed some penalty on the respondent. Looking to the charges proved against the respondent and considering the fact that the respondent had committed seven defaults in the past, I am of the opinion that One increment with future effect is required to be imposed on the respondent.

4. In the result, the petition is allowed. The award dated 31st December, 1996 passed by the Labour Court, Rajkot in Reference [I.T.R.] No. 286/90 is quashed and set aside. Further a penalty of stoppage of two increments with future effect is imposed on the respondent. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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